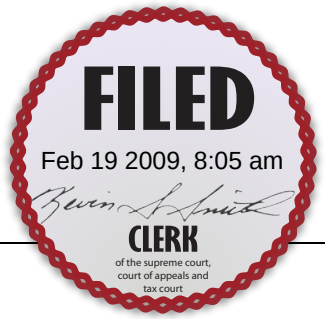
ATTORNEY FOR APPELLANT:

DANIEL J. LAYDEN
Williams Hewitt Barrett & Wilkowski, LLP
Greenwood, Indiana



IN THE
COURT OF APPEALS OF INDIANA

MIKE HALSTEAD,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A02-0804-CV-316
	)	
GILBERT BRIDGEWATER d/b/a GIL'S MACHINE SERVICE,	)	
	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gerald S. Zore, Judge
Cause No. 49D07-0611-PL-046861

February 19, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Mike Halstead ("Halstead") filed a complaint in Marion Superior Court against Gilbert Bridgewater d/b/a Gil's Machine Service ("Bridgewater") alleging that Bridgewater breached his oral contract with Halstead. The trial court entered a judgment in favor of Halstead, but subsequently granted Bridgewater's motion to correct error after concluding that the parties never had a meeting of the minds. Halstead appeals and argues that the trial court abused its discretion when it granted Bridgewater's motion to correct error. We reverse and remand for proceedings consistent with this opinion.

Facts and Procedural History

Halstead owns a 1967 Chevelle SuperSport ("the Chevelle"). In 2004, Halstead contacted Bridgewater and asked him if he would be interested in restoring the Chevelle. Bridgewater told Halstead that he could restore the vehicle for $12,000 for labor and $6,000 for parts, for a total of $18,000. The parties agreed that Halstead would purchase the parts and provide them to Bridgewater.

From May 2004 to June 2005, Halstead made payments to Bridgewater totaling $12,500. Halstead had also purchased floor and trunk pans. Bridgewater stopped working on the vehicle in June 2005 because Halstead had not provided primer and paint. At that time, the Chevelle had been almost completely dismantled. In August 2006, Halstead moved the vehicle out onto his driveway and stored the Chevelle's parts in a van parked nearby.

On November 17, 2006, Halstead filed a complaint against Bridgewater alleging breach of contract, tortious conversion, and unjust enrichment. A bench trial was held on December 12, 2007. The trial court issued its judgment on January 10, 2008, and

concluded that the parties had entered into an oral agreement to perform a "frame-off restoration" of the Chevelle for $18,000 of which $12,000 was for labor and $6,000 was for parts and materials. After concluding that Bridgewater was "unable to perform a quality restoration as promised," the court entered judgment in favor of Halstead in the amount of $18,000. Appellant's App. pp. 24-25. The court also ordered Halstead to remove his vehicle and all remaining parts from Bridgewater's property within fourteen days of the judgment, and if he failed to do so, Bridgewater would be permitted to dispose of the Chevelle.

On February 8, 2008, Bridgewater filed a motion to correct error and argued that the evidence at trial established that Halstead breached the oral agreement by failing to pay for the materials needed to complete the Chevelle restoration. However, Bridgewater also argued, "if this Court has determined that the terms of the agreement are unclear and therefore their [sic] was no meeting of the mind[s] and therefore no contract, then Defendant would request that the Court find in equity only that the vehicle be returned along with the parts that have been purchased for the restoration." Id. at 34.

On March 5, 2008, the trial court granted Bridgewater's motion and found that "the parties never had a meeting of the minds with regard to their oral contract." Id. at 7. The court therefore entered judgment in favor of Bridgewater and ordered Halstead to remove his vehicle and remaining parts from Bridgewater's property. Halstead now appeals. Additional facts will be provided as necessary.

Standard of Review

Initially, we note that Bridgewater failed to file an appellee's brief. We will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

Moreover, our court reviews rulings on motions to correct error for an abuse of discretion. Baumgart ex rel. Baumgart v. DeFries, 888 N.E.2d 199, 205 (Ind. Ct. App. 2008), trans. denied. An abuse of discretion occurs if the trial court's decision was against the logic and effect of the facts and circumstances before the court. Id.

Discussion and Decision

Halstead argues that the trial court abused its discretion when it granted Bridgewater's motion to correct error and asserts that the evidence established that the parties had a meeting of the minds. It is fundamental that a contract is formed by the exchange of an offer and acceptance between contracting parties. Wallem v. CLS Indus., 725 N.E.2d 880, 883 (Ind. Ct. App. 2000). Contract formation requires mutual assent on all essential contract terms. Buschman v. ADS Corp., 782 N.E.2d 423, 428 (Ind. Ct. App. 2003). Assent to the terms of a contract may be expressed by acts which manifest acceptance. Id. A meeting of the minds of the contracting parties, having the same intent, is essential to the formation of a contract. Fox Dev., Inc. v. England, 837 N.E.2d 161, 165 (Ind. Ct. App. 2005). The failure to demonstrate an agreement on essential terms of a purported contract negates mutual assent and hence there is no contract.

Wallem, 725 N.E.2d at 883. The question of whether a certain or undisputed set of facts establishes a contract is one of law. Fox. Dev., 837 N.E.2d at 165.

Halstead testified that Bridgewater agreed to perform a "frame-off restoration" of his Chevelle. Tr. p. 12. They agreed to a total price of $18,000. Of that $18,000, Bridgewater was to be paid $12,000 for labor and "$6000 was to go for parts, paint, . . . [and] any and all materials needed to accomplish" the restoration. Tr. p. 13. Halstead also testified that the parties agreed that Halstead would "buy the parts as [Bridgewater] needed them[.]" Tr. p. 15. Halstead explained that he "was going to have to pay for the parts anyhow, so [he] elected to pay for the parts out of [his] pocket instead of burdening [Bridgewater] with having to buy the parts out of his pocket." Tr. p. 16. From May 2004 to June 2005, Halstead paid $12,500 to Bridgewater.[1] Halstead also purchased floor and trunk pans "and all the respective parts and braces" for "those body pans," Bondo, and grinding wheels. Tr. p. 27. According to Halstead, at some point in June or July 2005, Bridgewater ceased working on the car. Halstead stated that Bridgewater wanted $2,000 from Halstead to buy parts, but Halstead refused because they agreed that Halstead would buy the parts. Tr. p. 31.

At trial, Bridgewater did not disagree with Halstead's testimony as to their agreement.[2] Bridgewater simply disputed the reason he stopped working on the Chevelle. He claimed that he repeatedly asked Halstead to purchase primer, paint, and

[1] When asked why he paid an extra $500 to Bridgewater, Halstead responded, "At that point in time, I still had all the faith in the world in him. You know, this was a big, major job. I wasn't going to, you know, you don't want to start splitting small hairs, you know when you're into a job this large." Tr. p. 24.

[2] Bridgewater represented himself at trial, but hired an attorney before his motion to correct error was filed.

other parts for the car, but Halstead did not do so. Therefore, he stopped working on the Chevelle. Concerning the agreement, Bridgewater testified:

> Well, if he'd have just bought the materials, he could have had one of the most beautiful Chevelles everybody has ever seen. And the way we had the deal worked out, within that year's time of him paying me the $12,000, I actually thought I'd have the car done and he'd still be making payments on it.
> He told me I could take the car to car shows and that's where I was going to make my money back because I told him I'm barely going to break even at the 12,000.

Tr. pp. 103-04.

This testimony establishes that the parties entered into a contract for the restoration of the Chevelle. The parties agreed that Halstead would pay $12,000 to Bridgewater for labor and that Halstead would purchase and provide to Bridgewater the parts required for the restoration. Accordingly, we conclude that the trial court abused its discretion when it granted Bridgewater's motion to correct error and determined there was no "meeting of the minds." We therefore reverse the trial court's judgment granting the motion to correct error and direct the trial court to reinstate its January 10, 2008 judgment.

Reversed and remanded for proceedings consistent with this opinion.

BROWN, J., concurs in result with opinion.

BAKER, C.J., dissents with opinion.

IN THE
COURT OF APPEALS OF INDIANA

MIKE HALSTEAD,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0804-CV-316
	)	
GILBERT BRIDGEWATER d/b/a GIL'S MACHINE SERVICE,	)	
	)	
Appellee-Defendant.	)	

BROWN, Judge, concurring in result

I concur in the result but write separately to state my belief that the correct resolution of this case by the trial court would have been to award Halstead the benefit of his bargain, which is a fully restored car for $18,000. As the dissent notes, the car, and all parts purchased by Halstead or the cost of the parts, should be returned to Halstead. However, since the car is now in pieces, it will cost an additional sum in labor to finish the car, which is another element of Halstead's damages. But Halstead did not present evidence at trial as to the cost to finish the car in its present state. Given that the sole issue as framed by Halstead is whether the trial court erred in granting Bridgewater's Motion to Correct Error and thereby vacating its original judgment, and we have determined that it did, it is appropriate that our decision be that the trial court now reinstate its original judgment.

IN THE
COURT OF APPEALS OF INDIANA

MIKE HALSTEAD,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0804-CV-316
	)	
GILBERT BRIDGEWATER d/b/a GIL'S MACHINE SERVICE,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gerald S. Zore, Judge
Cause No. 49D07-0611-PL-046861

BAKER, Chief Judge, dissenting.

Although I am compelled to concur with the majority's conclusion that there was, in fact, a meeting of the minds between Halstead and Bridgewater, I respectfully dissent from the disposition of the case. It is undisputed that Halstead paid Bridgewater $12,500 for labor and that Halstead spent an additional $1,166 on parts for the Chevelle. Tr. p. 24, 26-28. Therefore, the trial court's original judgment—which is reinstated as a result of the reversal of its ruling on the motion to correct error—awarding Halstead the Chevelle and the full contract price of $18,000 would result in a windfall to Halstead.

Thus, although I agree that the trial court's ruling on the motion to correct error should be reversed, I cannot agree that Halstead is entitled to the full $18,000 judgment initially awarded by the trial court. At most, Halstead is entitled to possession of the Chevelle plus $13,666. It may be, however, that most or all of the parts that Halstead purchased will be returned to him, in

which case he would not be entitled to be reimbursed for their purchase. Therefore, I would reverse and remand with instructions to hold a hearing determining what parts, if any, will not be returned to Halstead, directing that he be reimbursed for that amount plus $12,500.[3]

[3] Bridgewater did not cross-appeal the $18,000 judgment. Inasmuch as the trial court's order granting his motion to correct error reversed the initial judgment, however, there was no order that he could—or should—have appealed.